

DECISION



7/11/82
119135
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-205572

DATE: August 6, 1982

MATTER OF: Roy McGinnis & Co., Inc.

DIGEST:

1. Where total of item prices exceed total price for bid schedule and bidder would be three percent low if schedule price remained unchanged but one percent high if schedule price was adjusted to conform to actual total of item prices, the source of error and intended price must be ascertained substantially from invitation and bid itself. As there was no consistent bidding pattern within bid or with respect to Government estimate and other bids for same items, it was improper for agency to narrow area of possible error to one item price and permit adjustment by change of placement of decimal since error could have been in addition, in one item price, or in a combination of 33 item prices.
2. Since agency has issued orders for only about 20 percent of work under improperly awarded requirements contract, GAO recommends termination for convenience as expense and impact on agency would be minimal and that award for terminated work be made to protester as the low bidder.

Roy McGinnis & Company, Inc., protests a contract award to Transco Contracting Company under invitation for bids (IFB) No. F41800-81-B-0627 for the painting of various buildings at Kelly Air Force Base, Texas. McGinnis contends the Air Force improperly permitted Transco to correct an item price to be compatible with a total price in violation of the terms of the solicitation. We sustain the protest.

The bidding schedule for this IFB ("Schedule C") was divided into Schedules Nos. 1 through 5, each of which represented all the work to be done at one of five different Air Force bases. In this protest, we are concerned solely with Schedule C, No. 3, which included all the work to be done at Kelly Air Force Base. The IFB stated that a separate contract would be awarded for each of the five schedules to the low, responsible bidder in the aggregate for that schedule, and the IFB required bidders to submit a bid for each line item of any schedule bid upon.

Schedule C, No. 3, like the other four schedules, was broken down into "groups" of similar items of work: for example, exterior painting of buildings was within one group and exterior repairs within another. Among other groups within the Schedule was Group I-C, which was for the painting of the complete exteriors of certain buildings at Kelly. Although there were 38 line items under Group I-C, five were marked "Not Used," so the group actually represented the painting of 33 different buildings.

Bidders were to enter a price for each line item as well as a "total" price for each group. In addition, at the end of each numbered schedule was a "Summation Sheet" upon which the total for each group and the "grand total" for the schedule was to be entered.

As its total price for Group I-C, Transco entered \$125,500. Its grand total for Schedule No. 3 was entered as \$489,303. At this price, Transco was the low bidder for Schedule No. 3 and McGinnis, the protester, was second low at \$506,955.20. The Air Force subsequently permitted Transco's bid to be raised by \$4,060 as the result of the correction of two multiplication errors in another group. This correction, which is not at issue, brought Transco's grand total for Schedule No. 3 to \$493,863, at which price Transco was still low.

What gave rise to this protest was Transco's bid for line item No. 11 in Group I-C. Item No. 11 was Building No. 300, a stucco building with an area to be painted of 209 squares (each square equaling 100 square feet). The bids on Item No. 11 are shown below, along with the price per square which we obtained by dividing 209 into the total price for painting the building:

<u>Bidder</u>	<u>Total Price Item No. 11</u>	<u>Price Per Square</u>
Riley	\$ 5747.50	\$ 27.50
Transco	25000.00	120.00
Mantikas	4598.00	22.00
McGinnis	7020.00	34.00
Gov't Est.	4825.00	23.00

In verifying the addition of line item prices, the Air Force discovered that the sum of Transco's individual prices for the 33 buildings in Group I-C was \$148,000, not \$125,500 as Transco entered in its bid. If the difference between these two figures, \$22,500, were added to Transco's bid for Schedule No. 3, its price would exceed that of McGinnis, which would then become the low bidder for the schedule.

The Air Force concluded that Transco's bid of \$125,500 for Group I-C could be correct only if its bid of \$25,000 for Item No. 11 was intended to be \$2,500. The latter figure, the Air Force determined, was more in line with the other prices bid by Transco for similar work, with the Government's estimate, and with the prices of the other bidders for the same line item. After verification by Transco, who submitted work sheets and affidavits supporting its claim that a decimal point had been misplaced, the Air Force permitted the figure to be corrected as a clerical error within the purview of Defense Acquisition Regulation (DAR) § 2-406.2. Transco was then awarded the contract.

McGinnis contends Transco's bid did not contain a clerical mistake "apparent on the face of the bid" within the meaning of DAR § 2-406.2. It argues that the regulation does not contemplate that figures will be dropped, added or adjusted, to reconcile individual prices with the total prices. McGinnis insists the Government could not know from the face of Transco's bid whether the error lay in the price for Item No. 11 or in the total price for Group I-C; and could not determine Transco's intended price from the face of the bid and without benefit of advice from the bidder. McGinnis maintains that the \$25,000 is no more grossly out of line than the adjusted item price of \$2,500, which is less than half of the prices submitted by two of the bidders, and barely more than half of the Government's estimate and the prices of the remaining bidders; that

there are many other possible reasons which could account for the \$25,000 item price; and that by using the Air Force's logic, unit prices for other line items could have been "forced" to arrive at a total price of \$125,500 for Group I-C. McGinnis further contends that because the correction resulted in its displacement as the low bidder for the schedule, Transco's bid was not eligible for correction as a mistake.

To be correctable as a clerical error under the provisions of DAR § 2-406.2, a mistake must be obvious on the face of the bid and the contracting officer must be able to ascertain the intended bid from the face of the bid. Western Equipment of Oregon, B-204125, December 8, 1981, 61 Comp. Gen. _____, 81-2 CPD 447. DAR § 2406.3(a) provides that to correct a mistake when such correction would displace a lower bid, there must be clear and convincing evidence establishing both the existence of the mistake and the bid actually intended, which must be "ascertainable substantially from the invitation and the bid itself." However, the basis for determining whether an asserted correct price is reasonable is not confined to the face of the bid itself, but may include reference to Government estimates and the range of other bids as well as logic and experience. Federal Aviation Administration-Bid Correction, B-187220, October 8, 1976, 76-2 CPD 326.

In the usual unit price/extended price case, it is clear that the error is either in the unit price or in the multiplication of the unit price to obtain the extended price. For example, in Engle Acoustic & Tile, Inc., B-190467, January 27, 1978, 78-1 CPD 72, the issue was whether a unit price of \$39 or an extended price indicating the unit price should have been 39 cents was correct, and it was apparent from the face of the bid that the unit price was in error. Moreover, if the unit price had not been adjusted to conform to the extended price, the total price of the awardee would have been about 108 percent above the next low project bid. Although we do not think the Engle decision is dispositive here, the basic principles of such cases can be applied to the resolution of this case.

We have analyzed the bids received for Group I-C to see if there exists some pattern from which the error and Transco's intended bid would be apparent, and have concluded that McGinnis is correct in that this cannot be done without the benefit of Transco's post-bid opening explanation.

The bids of two firms--Riley and Mantikas--are uniform throughout Group I-C. Riley's price for each building, when divided by the area to be painted, equals \$27.50 per square for each of the 33 line items. Similarly, Mantikas' bid computes to \$22 per square in each instance. With the exception of two small buildings priced at \$66 and \$81.80 per square, the Government estimate varied between \$20 and \$27 per square; 65 percent of the Group I-C items were priced at \$23 per square under the Government estimate. McGinnis' prices varied from a low of \$13.50 per square to a high of \$38 per square; however, more than 85 percent of McGinnis' prices were between \$20 and \$29 per square.

Apart from Transco's bid on Item No. 11, we find it bid from \$11 to \$86 per square. Although the majority of Transco's line item prices compute to per square prices in the twenties --from \$20 to \$28--no consistent pattern can be established. As indicated above, Transco's price of \$25,000 for Item No. 11 computes to \$120 per square--clearly out of line with the other bids received. Adjusted to \$2,500, this price equals \$12 per square. While this adjusted price is reasonably consistent with Transco's bid upon five other items in Group I-C (four buildings of 270 squares each at \$13 per square and one building of 270 squares at \$11 per square), a consistent bidding pattern reflecting lower prices per square when more squares are involved cannot be established. As examples, and in terms of per square prices, Transco bid \$11.50 for one building with 1559 squares and \$11 for another with 270 squares; \$13 for buildings ranging from 13 to 1883 squares; \$28 for buildings ranging from 36 to 252 squares; and \$54 for 11 squares and \$86 for 14 squares. In addition, while the surfaces to be painted include stucco, wood, asbestos siding, metal and concrete block, Transco's bid prices do not reflect any discernible pattern related to the material to be painted.

It is no more easy to discern from the face of Transco's bid what occurred with respect to Item 11 than it would be for other items upon which it bid in Group I-C. Line Item No. 10, for example, was a stucco building of 1559 squares. The bids on this item were:

<u>Bidder</u>	<u>Amount</u>
Riley	\$ 42,872.50
Transco	18,000.00
Mantikas	34,298.00
McGinnis	34,927.00
Gov't Est.	35,900.00

Transco's bid on this item was approximately half that of the other bidders and the Government estimate. When combined with Transco's \$25,000 bid on the succeeding item, No. 11, however, the total approximates that of the other bidders upon these two items:

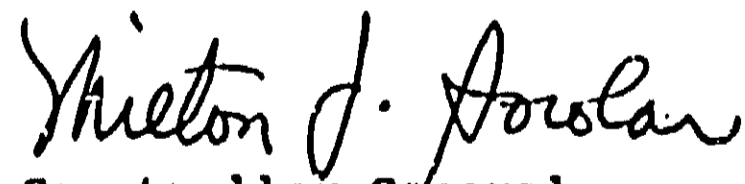
<u>Bidder</u>	<u>Item 10</u>	<u>Item 11</u>	<u>Total</u>
Riley	\$ 42,872.50	\$ 5,747.50	\$ 48,620.00
Transco	18,000.00	25,000.00	43,000.00
Mantikas	34,298.00	4,598.00	38,896.00
McGinnis	34,927.00	7,020.00	41,947.00
Gov't Est.	35,900.00	4,825.00	40,725.00

Therefore, under the circumstances presented, we are unable to agree that the \$25,000 price for line Item 11 can be adjusted as a clerical error under DAR § 2-406.2 because the nature and cause of the suspected error are not obvious from the face of the bid and the intended bid cannot be ascertained from the face of the bid. Western Equipment of Oregon, supra. Moreover, we do not believe the price can be adjusted as a mistake under DAR § 2-406.3(a) because the intended bid cannot be ascertained substantially from the face of the invitation and the bid itself or even with resort to the Government estimate, the range of other bids, as well as logic and experience. Although we do not challenge Transco's good faith, it was given the opportunity to decide after bid opening which price to support since it could, by pointing to its lack of bidding pattern, reasonably argue that either its item price or the group and schedule prices were in error. Such a choice is unfair to the other bidders and is not permitted. Western Equipment of Oregon, supra; H. Martin Construction Company, B-201352, April 8, 1981, 81-1 CPD 268; RAJ Construction, Inc., B-191708, March 1, 1979, 79-1 CPD 140.

The determination whether termination of an improperly awarded contract is in the best interest of the Government involves the consideration of several factors, besides the seriousness of the procurement deficiency. See System Development Corporation, B-191195, August 3, 1978, 78-2 CPD 159. Among the other factors to be considered are the extent of performance, cost to the Government, the urgency of the procurement and the impact of a termination upon the mission of the agency.

We have been informed by the Air Force that Transco has been issued one order under its requirements contract for \$100,000 of which \$85,000 has been paid. It therefore appears the expense and impact upon the agency resulting from a termination of Transco's contract would be minimal. Accordingly, we recommend that Transco be permitted to complete its work under the outstanding order and that with respect to the remainder of the work, the contract be terminated for the convenience of the Government. We further recommend that a requirements contract for such terminated work be awarded to McGinnis if it is still willing to accept it at the prices in its bid. If not, the contract with Transco may be left undisturbed.

Since this decision contains a recommendation for corrective action, we have furnished a copy to the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the House Committee on Government Operations, Senate Committee on Governmental Affairs, and House and Senate Committees on Appropriations concerning the action taken with respect to our recommendation.

for 
Comptroller General
of the United States